

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NICHIAS TURBAN, <i>on behalf of himself and others</i>	:
<i>similarly situated</i> , et al.,	:
	:
Plaintiffs,	:
	:
-v-	:
	:
BAR GIOCOSA CORP. and GIOVANNI TOGNOZZI,	:
	:
Defendants.	:
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19-CV-1138 (JMF)

MEMORANDUM OPINION
AND ORDER

JESSE M. FURMAN, United States District Judge:

Plaintiffs bring this action pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, and the New York State Labor Law (“NYLL”), N.Y. Lab. Law §§ 190 *et seq.* and 650 *et seq.* On August 9, 2019, the parties stipulated to conditional certification of a FLSA collective action and for approval of a collective action notice. ECF No. 32. The parties agree on all points regarding the collective notice and opt-in consent form except whether such notice should be disseminated by text message in addition to mailing.

Upon review of the parties’ submissions, the collective action is hereby conditionally **CERTIFIED** and the proposed notice and opt-in consent forms are hereby **APPROVED**. With respect to the one issue in dispute, *see* ECF No. 32, at 2-5, the Court finds that text-message notice is not appropriate in this case. Although the Court has approved such notice in the past, *see Mendez v. Sweet Sam’s Baking Co. LLC*, 2019 U.S. Dist. LEXIS 87060, *3 (S.D.N.Y. May 23, 2019), it concludes, upon review of the parties’ submissions, that Plaintiffs have not sufficiently demonstrated that turnover and relocation by potential members of the collective will

render mailed notice ineffective. *See, e.g., Park v. FDM Grp. Inc.*, No. 16-CV-01520 (LTS) (SN), 2019 WL 2205715, at *7 (S.D.N.Y. May 22, 2019).

Accordingly, the Court hereby ORDERS as follows:

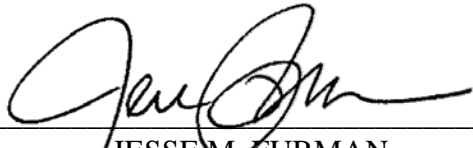
1. The proposed collective action notice attached as Exhibit “A” to the parties’ joint letter dated August 9, 2019 (ECF No. 32), is hereby approved for mailing to potential plaintiffs. The parties shall amend the proposed notice to include a deadline certain — 60 days from the date of mailing — before the notices are mailed. *See* ECF No. 32-1, at 3, 4, 7.
2. The collective class of potential plaintiffs in this matter shall consist of all persons who were employed at Bar Pitti as service employees, other than service managers, at any time between February 6, 2016 and the present.
3. Defendants shall provide Plaintiffs’ counsel with the names and last known addresses of all potential members of the collective **no later than fourteen (14) days after the date of this Order**. This information shall be supplied in paper form, and also digitally in one of the following formats: Microsoft Excel or Microsoft Word.
4. Plaintiffs’ counsel shall mail the Court-Authorized Notice and the Consent to Join forms to all potential members of the collective **no later than fourteen (14) days** following Defendants’ disclosure of the names and last known addresses of the potential members of the collective. If notice to any potential opt-in plaintiff is returned as undeliverable, Plaintiffs’ counsel is permitted to mail the notice to such potential plaintiff again at any other address determined to be reasonable.

5. All potential members of the collective must opt in by returning the executed form entitled “Consent to Join” form to the Clerk of Court **no later than sixty (60) days following the date of mailing of the notice.**
6. The parties shall promptly confer and, no later than **August 23, 2019**, submit a letter motion proposing modifications, as needed, to the existing schedule in light of this Order and the opt-in period. *See* ECF No. 25.

The Clerk of Court is directed to (1) file in this action all opt-in forms that are returned **after redacting the plaintiff’s personal information** (address, telephone number, and email address) and (2) mail to Plaintiffs’ counsel unredacted copies of all opt-in consent forms.

SO ORDERED.

Dated: August 14, 2019
New York, New York



JESSE M. FURMAN
United States District Judge